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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,361	12/22/2000	Thomas M. Armstrong	PB-0092	2193
22840	7590	10/19/2005	EXAMINER	
MERLINO, AMANDA H				
ART UNIT		PAPER NUMBER		
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Application Number: 09/746,361  
Filing Date: December 22, 2000  
Appellant(s): ARMSTRONG ET AL.

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Yonggang Ji  
For Appellant

MAILED  
OCT 19 2005  
GROUP 2800

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/4/05 appealing from the Office action  
mailed 12/6/04.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-21 rejected under 35 U.S.C. 102(e) as being clearly anticipated by Gilby (6,239,871).

Gilby teaches of an optical analysis chamber comprising an optically transmissive elongated tubular body (112) having an interior and exterior surface wherein the interior surface of the tubular body is the exterior surface of the cell (116), wherein said interior surface wall defines an elongate separation chamber that is in direct contact with a sample material, said body wall having a window (100) having a substantially convex exterior surface wherein said window has a non uniform thickness (figure 2A) and wherein the longitudinal axis of the sample passageway is offset from the tubular body.

**(10) Response to Argument**

Applicant argues that "unlike the current invention which the interior of the optical chamber houses the analyte sample directly, a capillary or cell has to be placed in the Gilby optical scheme, and sample analytes are contained within the capillary cell." Examiner respectfully disagrees since the claims can be interpreted as the tubular body having an interior and exterior surface wherein the interior surface of the body is (116) which is in direct contact with the sample and the exterior is 100.

Secondly, applicant argues that "contrary to the current invention, the separation chamber (cell or capillary) in the optical apparatus of Gilby is clearly separated from the other components." Examiner stands on the grounds that claim 1 does not state that

the separation chamber is not separated from the other components. Applicant is arguing a limitation that does not appear to exist in the claim language.

Thirdly, applicant argues that the elongate separation chamber defined by the interior surface is in direct contact with a sample material being analyzed and that Gilby does not show that limitation. Examiner respectfully disagrees. The elongation separation chamber of the prior art is 116 which clearly is in direct contact with the sample.

Lastly, applicant argues that the Examiner erred in stating, "the exterior surface can be either interpreted as (104) or (100). Examiner respectfully disagrees. Examiner stands on the grounds that the claim can be interpreted as the exterior surface being 104 and the window being 100 since the claim merely recites the body wall (104) further includes a first transmissive window 100 and the exterior of the body wall (104) does not have to be the same as the first transmissive window. However, Examiner agrees that the clearer and better interpretation of the claims is that (116) is the interior surface and (100) is the exterior surface.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Amanda Merlino *ahm*

**Conferees:**

Amanda Merlino *ahm*

Gregory J. Toatley, Jr.

Andrew Hirshfeld *AHH*

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130-706